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Supreme Court, U. S.
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In The
SUPREME COURT OF THE UNITED STATES

No. 71-1175

Willodean Forks
Conrad Forks
Kaleen Kehoe
Richard L. Kehoe, Jr.
Stephen M. Kerr
Lynn K. Coyle
William M. Coyle
Mary C. Grover, Petitioners,

V.

City of Warsaw, Indiana, Respondent

On Petition for Writ of Certiorari to the
United States Supreme Court

Brief For the Respondent

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Statement

On March 29, 1969, the City of Warsaw, Indiana, enacted Ordinance No. 535, by which ordinance it annexed certain territory to the City. This ordinance was enacted pursuant to authority given by Chapter 269, Sections 1 and 3 of the Acts of the General Assembly of Indiana of 1955 (Burns Ind. Statutes, Sections 48-701 and 48-702) which was in effect at that time, although since repealed, effective January 1, 1970, by Chapter 239, Section 8 of the Acts of 1969. Section 1 of the 1955 Acts generally provided, insofar as here applicable, that the common council of a city could annex contiguous territory by ordinance, which ordinance could include terms and conditions, deemed reasonable by said common council, relating to any matter reasonably and fairly calculated to render such annexation just and equitable both to the property owners and inhabitants of the city and the territory annexed. Section 3 of said Acts generally provided that a majority of the owners of land in the annexed territory or the owners of seventy-five per cent in assessed valuation of the real estate in the annexed territory, could file a remonstrance against the annexation in the circuit or superior court of the county, and if this was done the burden was on the city to demonstrate to the court, by the presentation of evidence, that six determinants were present, said determinants relating to whether the annexation was in the best interests of both the city and the annexed territory, the fairness of the terms and conditions contained in the ordinance, the financial ability of the city to provide municipal services to the annexed area, etc. In the event the court found all determinants were present the annexation would take place, otherwise not.

The petitioners, who did not own land but owned personal property only in the annexed area, filed their complaint in the circuit court alleging, insofar as here applicable, that the statute under which the ordinance was enacted was in violation of the equal protection of laws provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the reason it restricted the right to remonstrate to owners of land only in the annexed area, which restriction constituted an arbitrary classification. Petitioners also claimed that the remonstrance provisions of the statute constituted an "election" and the right to "vote" was denied them.

ARGUMENT

I

THE DECISIONS OF THE INDIANA SUPREME COURT IS IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

A.

The remonstrance procedure of Indiana annexation statute is not an "election", and does not conflict with the "Kramer" and "Cipriano" decisions of this Court.

Implicit in the definition of the word "election" is the casting of ballots, counting them, and making the return, which return, by its numbers, determines the selection of persons to fill public offices or determines the adoption or rejection of public measures. See 25 Am. Jur. 2nd, Elections, sec. 1; 29 Corpus Juris Secundum, Elections, sec. 1.

Burns Ind. Stat., 1970 Supp., Sec. 29-2802 defines election as follows:

"'Election'. The word 'elections' ('Election') shall mean and include any election at which the electors of the state or of any subdivision thereof nominate or choose by ballot public officials or decide any public question lawfully submitted to them."

The remonstrance procedure of the statute in question provides who may file a complaint in court to require the annexing city to prove, by evidence, to the court that certain determinants set forth in the statute exist before the annexation shall become effective. It is not a choice by the people that determines the issue. One hundred per cent of the affected people could remonstrate, and this would have no bearing whatsoever on the question to be decided by the court.

It was not at all necessary that the legislature give the right to remonstrate to anyone. It has long been recognized by this Court that a state legislature may authorize the annexation of territory by a municipality without the consent of persons residing therein. Hunter v. Pittsburg, 207 U.S. 369.

The Indiana Legislature, as pointed out in the Indiana Supreme Court opinion, could have provided for a referendum (or a regular election) on questions of annexation. This they did not choose to do. Providing for a court hearing is a far cry from an election. For these reasons, the law set forth by this Court in the two cases relied upon by petitioners, Kramer v. Union Free School District, 395 US 621 and Cipriano v. City of Houma, 395 US 701, are not in point, as the Kramer case involved electing members of a district school board, and the Cipriano case involved an election called to approve the issuance of revenue bonds by a municipal utility, both clearly

factual situations involving "elections". The constitutionality of the Indiana statute must therefore be determined according to legal precedence set forth by this Court in cases other than those involving election laws.

B.

The Indiana legislature, by giving landowners in the area to be annexed the right to remonstrate, and by failing to give the same right to tenants residing in said area, did not create an arbitrary or capricious classification in violation of the equal protection clause of the Fourteenth Amendment.

This Court has long recognized that the equal protection clause of the Constitution does not prohibit legislative classifications by the states and the imposition of statutory restraints on one class which are not imposed upon another class, but such classification is only required to be reasonable, and not arbitrary. In 1911, in the case of Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, this Court set forth four rules that had theretofore guided the Court in determining whether classifications made by state statutes offend against the equal protection clause. These were:

> "1. The equal protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits to the exercise of a wide scope of discretion in that regard and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that

clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest on any reasonable basis, but is essentially arbitrary."

And the rule has gone even farther when the classification involves a municipal corporation in its relationship with municipal property. Hunter v. Pittsburg, 207 U.S. 161. There this Court stated: "Municipal Corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be instructed to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the sound discretion of the state . . . In all these respects the state is supreme, and its legislative body, conforming its actions to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States."

In any event, the reasonableness of the classification here involved, as shown by the opinion of the Indiana Supreme Court, cannot be seriously questioned. After all, it was land that was being annexed, and the

land will remain annexed throughout the future. The tenants, and their personal property, are prone to be transitory, and they may remove themselves and their personal property completely from the city boundaries.

Petitioners appear to argue that they will suffer inequities by reason of the annexation. But, as stated in 16 Am. Jur. 2nd, Constitutional Law, Section 494: "As a matter of fact, as some of the courts have remarked, all legislation involves classification; from the earliest days classification has been made by legislatures whereby some people have rights or suffer burdens which others do not. A defferentiation is not necessarily a discrimination. And since the very idea of classification is inequality, inequality in no matter determines the question of constitutionality."

II

Assuming, arguendo, that the classification made by the legislature is arbitrary and void, the section of the act authorizing remonstrances is separate and apart from the section authorizing the annexation to take place, and if stricken out a complete and valid statute would remain.

The first section of the statute (Burns 48-701) authorizes the city to annex territory. The second section (Burns 48-702) provides for the filing of remonstrances.

The Indiana Supreme Court, in 1896, considered a similar attack on the remonstrance provisions of the then annexation law, and held that the remonstrance

provisions could be eliminated without in any way impairing the force of the statute authorizing common councils to annex territory. Taggart v. Claypool, 145 Ind. 590, 44 N.E. 18. See El Paso and N.E.R. Co. v. Gutienez, 215 U.S. 87. As the legislature could have provided for annexation without granting the right to remonstrate, a valid act would remain.

III

PETITIONERS HAVE NO STANDING TO QUESTION THE CONSTITUTIONALITY OF THE STATUTE, AS THE RECORD SHOWS THEY HAVE SUFFERED NO INJURY.

Petitioners' complaint (Tr. pp. 31-37) by rhetorical paragraph 9, discloses that a remonstrance was filed to ordinance 535 in the circuit court, and was pending when the amended complaint in this action was filed. Thus a court determination of the existence of the statutory determinants was assured petitioners. They therefore have suffered no injury. 16 Am. Jur. 2d Constitutional Law, Sec. 123.

Conclusion

It is submitted the petition should be denied.

Respectfully submitted,

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